

By: Schwertner, et al.

S.B. No. 8

A BILL TO BE ENTITLED

AN ACT

relating to certain prohibited abortions and the treatment and disposition of a human fetus and human fetal tissue; creating a civil cause of action; creating offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 171, Health and Safety Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. PARTIAL-BIRTH ABORTIONS

Sec. 171.101. DEFINITIONS. In this subchapter:

(1) "Partial-birth abortion" means an abortion in which the person performing the abortion:

(A) for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus, deliberately and intentionally vaginally delivers a living fetus until:

(i) for a head-first presentation, the entire fetal head is outside the body of the mother; or

(ii) for a breech presentation, any part of the fetal trunk past the navel is outside the body of the mother; and

(B) performs the overt act described in Paragraph (A), other than completion of delivery, that kills the partially delivered living fetus.

(2) "Physician" means an individual who is licensed to

1 practice medicine in this state, including a medical doctor and a  
2 doctor of osteopathic medicine.

3 Sec. 171.102. PARTIAL-BIRTH ABORTIONS PROHIBITED. (a) A  
4 physician or other person may not knowingly perform a partial-birth  
5 abortion.

6 (b) Subsection (a) does not apply to a physician who  
7 performs a partial-birth abortion that is necessary to save the  
8 life of a mother whose life is endangered by a physical disorder,  
9 physical illness, or physical injury, including a life-endangering  
10 physical condition caused by or arising from the pregnancy.

11 Sec. 171.103. CRIMINAL PENALTY. A person who violates  
12 Section 171.102 commits an offense. An offense under this section  
13 is a state jail felony.

14 Sec. 171.104. CIVIL LIABILITY. (a) Except as provided by  
15 Subsection (b), the father of the fetus or a parent of the mother of  
16 the fetus, if the mother is younger than 18 years of age at the time  
17 of the partial-birth abortion, may bring a civil action to obtain  
18 appropriate relief, including:

19 (1) money damages for physical injury, mental anguish,  
20 and emotional distress; and

21 (2) exemplary damages equal to three times the cost of  
22 the partial-birth abortion.

23 (b) A person may not bring or maintain an action under this  
24 section if:

25 (1) the person consented to the partial-birth  
26 abortion; or

27 (2) the person's criminally injurious conduct resulted

1 in the pregnancy.

2 Sec. 171.105. HEARING. (a) A physician who is the subject  
3 of a criminal or civil action for a violation of Section 171.102 may  
4 request a hearing before the Texas Medical Board on whether the  
5 physician's conduct was necessary to save the life of a mother whose  
6 life was endangered by a physical disorder, physical illness, or  
7 physical injury, including a life-endangering physical condition  
8 caused by or arising from the pregnancy.

9 (b) The board's findings under Subsection (a) are  
10 admissible in any court proceeding against the physician arising  
11 from that conduct. On the physician's motion, the court shall delay  
12 the beginning of a criminal or civil trial for not more than 60 days  
13 for the hearing to be held under Subsection (a).

14 Sec. 171.106. APPLICABILITY. A woman on whom a  
15 partial-birth abortion is performed or attempted in violation of  
16 this subchapter may not be prosecuted under this subchapter or for  
17 conspiracy to commit a violation of this subchapter.

18 SECTION 2. Subtitle H, Title 2, Health and Safety Code, is  
19 amended by adding Chapter 173 to read as follows:

20 CHAPTER 173. DONATION OF HUMAN FETAL TISSUE

21 Sec. 173.001. DEFINITIONS. In this chapter:

22 (1) "Authorized facility" means:

23 (A) a hospital licensed under Chapter 241;

24 (B) a hospital maintained or operated by this  
25 state or an agency of this state;

26 (C) an ambulatory surgical center licensed under  
27 Chapter 243; or

1           (D) a birthing center licensed under Chapter 244.

2           (2) "Human fetal tissue" means any gestational human  
3 organ, cell, or tissue from an unborn child. The term does not  
4 include supporting cells or tissue derived from a pregnancy,  
5 associated maternal tissue that is not part of the unborn child, the  
6 umbilical cord, or the placenta.

7           Sec. 173.002. APPLICABILITY. This chapter does not apply  
8 to:

9           (1) human fetal tissue obtained for diagnostic or  
10 pathological testing;

11           (2) human fetal tissue obtained for a criminal  
12 investigation; or

13           (3) human fetal tissue or human tissue obtained during  
14 pregnancy or at delivery of a child, provided the tissue is obtained  
15 by an accredited university for use in research approved by an  
16 institutional review board or another appropriate university  
17 board, committee, or body charged with oversight applicable to the  
18 research.

19           Sec. 173.003. ENFORCEMENT. (a) The department shall  
20 enforce this chapter.

21           (b) The attorney general, on request of the department or a  
22 local law enforcement agency, may assist in the investigation of a  
23 violation of this chapter.

24           Sec. 173.004. PROHIBITED DONATION. A person may not donate  
25 human fetal tissue except as authorized by this chapter.

26           Sec. 173.005. DONATION BY AUTHORIZED FACILITY. (a) Only  
27 an authorized facility may donate human fetal tissue. An

1 authorized facility may donate human fetal tissue only to an  
2 accredited university for use in research approved by an  
3 institutional review board or another appropriate university  
4 board, committee, or body charged with oversight applicable to the  
5 research.

6 (b) An authorized facility may not donate human fetal tissue  
7 obtained from an elective abortion.

8 Sec. 173.006. INFORMED CONSENT REQUIRED. An authorized  
9 facility may not donate human fetal tissue under this chapter  
10 unless the facility has obtained the written, voluntary, and  
11 informed consent of the woman from whose pregnancy the fetal tissue  
12 is obtained. The consent must be provided on a standard form  
13 prescribed by the department.

14 Sec. 173.007. CRIMINAL PENALTY. (a) A person commits an  
15 offense if the person:

16 (1) offers a woman monetary or other consideration to:  
17 (A) have an abortion for the purpose of donating  
18 human fetal tissue; or

19 (B) consent to the donation of human fetal  
20 tissue; or

21 (2) knowingly or intentionally solicits or accepts  
22 tissue from a fetus gestated solely for research purposes.

23 (b) An offense under this section is a Class A misdemeanor  
24 punishable by a fine of not more than \$10,000.

25 (c) With the consent of the appropriate local county or  
26 district attorney, the attorney general has concurrent  
27 jurisdiction with that consenting local prosecutor to prosecute an

1 offense under this section.

2 Sec. 173.008. RECORD RETENTION. Unless another law  
3 requires a longer period of record retention, an authorized  
4 facility may not dispose of any medical record relating to a woman  
5 who consents to the donation of human fetal tissue before:

6 (1) the seventh anniversary of the date consent was  
7 obtained under Section 173.006; or

8 (2) if the woman was younger than 18 years of age on  
9 the date consent was obtained under Section 173.006, the later of:

10 (A) the woman's 23rd birthday; or

11 (B) the seventh anniversary of the date consent  
12 was obtained.

13 Sec. 173.009. ANNUAL REPORT. An authorized facility that  
14 donates human fetal tissue under this chapter shall submit an  
15 annual report to the department that includes for each donation:

16 (1) the specific type of fetal tissue donated; and

17 (2) the accredited university that received the  
18 donation.

19 SECTION 3. Section 164.052(a), Occupations Code, is amended  
20 to read as follows:

21 (a) A physician or an applicant for a license to practice  
22 medicine commits a prohibited practice if that person:

23 (1) submits to the board a false or misleading  
24 statement, document, or certificate in an application for a  
25 license;

26 (2) presents to the board a license, certificate, or  
27 diploma that was illegally or fraudulently obtained;

1           (3) commits fraud or deception in taking or passing an  
2 examination;

3           (4) uses alcohol or drugs in an intemperate manner  
4 that, in the board's opinion, could endanger a patient's life;

5           (5) commits unprofessional or dishonorable conduct  
6 that is likely to deceive or defraud the public, as provided by  
7 Section 164.053, or injure the public;

8           (6) uses an advertising statement that is false,  
9 misleading, or deceptive;

10          (7) advertises professional superiority or the  
11 performance of professional service in a superior manner if that  
12 advertising is not readily subject to verification;

13          (8) purchases, sells, barter, or uses, or offers to  
14 purchase, sell, barter, or use, a medical degree, license,  
15 certificate, or diploma, or a transcript of a license, certificate,  
16 or diploma in or incident to an application to the board for a  
17 license to practice medicine;

18          (9) alters, with fraudulent intent, a medical license,  
19 certificate, or diploma, or a transcript of a medical license,  
20 certificate, or diploma;

21          (10) uses a medical license, certificate, or diploma,  
22 or a transcript of a medical license, certificate, or diploma that  
23 has been:

24                   (A) fraudulently purchased or issued;

25                   (B) counterfeited; or

26                   (C) materially altered;

27          (11) impersonates or acts as proxy for another person

1 in an examination required by this subtitle for a medical license;

2 (12) engages in conduct that subverts or attempts to  
3 subvert an examination process required by this subtitle for a  
4 medical license;

5 (13) impersonates a physician or permits another to  
6 use the person's license or certificate to practice medicine in  
7 this state;

8 (14) directly or indirectly employs a person whose  
9 license to practice medicine has been suspended, canceled, or  
10 revoked;

11 (15) associates in the practice of medicine with a  
12 person:

13 (A) whose license to practice medicine has been  
14 suspended, canceled, or revoked; or

15 (B) who has been convicted of the unlawful  
16 practice of medicine in this state or elsewhere;

17 (16) performs or procures a criminal abortion, aids or  
18 abets in the procuring of a criminal abortion, attempts to perform  
19 or procure a criminal abortion, or attempts to aid or abet the  
20 performance or procurement of a criminal abortion;

21 (17) directly or indirectly aids or abets the practice  
22 of medicine by a person, partnership, association, or corporation  
23 that is not licensed to practice medicine by the board;

24 (18) performs an abortion on a woman who is pregnant  
25 with a viable unborn child during the third trimester of the  
26 pregnancy unless:

27 (A) the abortion is necessary to prevent the

1 death of the woman;

2 (B) the viable unborn child has a severe,  
3 irreversible brain impairment; or

4 (C) the woman is diagnosed with a significant  
5 likelihood of suffering imminent severe, irreversible brain damage  
6 or imminent severe, irreversible paralysis;

7 (19) performs an abortion on an unemancipated minor  
8 without the written consent of the child's parent, managing  
9 conservator, or legal guardian or without a court order, as  
10 provided by Section 33.003 or 33.004, Family Code, unless the  
11 abortion is necessary due to a medical emergency, as defined by  
12 Section 171.002, Health and Safety Code;

13 (20) otherwise performs an abortion on an  
14 unemancipated minor in violation of Chapter 33, Family Code; or

15 (21) performs or induces or attempts to perform or  
16 induce an abortion in violation of Subchapter C or F, Chapter 171,  
17 Health and Safety Code.

18 SECTION 4. Section 164.055(b), Occupations Code, is amended  
19 to read as follows:

20 (b) The sanctions provided by Subsection (a) are in addition  
21 to any other grounds for refusal to admit persons to examination  
22 under this subtitle or to issue a license or renew a license to  
23 practice medicine under this subtitle. The criminal penalties  
24 provided by Section 165.152 do not apply to a violation of Section  
25 170.002, Health and Safety Code, or Subchapter C or F, Chapter 171,  
26 Health and Safety Code.

27 SECTION 5. Section 48.02(a), Penal Code, is amended to read

1 as follows:

2 (a) In this section, "human [~~Human~~] organ" means the human  
3 kidney, liver, heart, lung, pancreas, eye, bone, skin, [~~fetal~~  
4 ~~tissue,~~] or any other human organ or tissue, but does not include  
5 hair or blood, blood components (including plasma), blood  
6 derivatives, or blood reagents. The term does not include human  
7 fetal tissue as defined by Section 48.03.

8 SECTION 6. Chapter 48, Penal Code, is amended by adding  
9 Section 48.03 to read as follows:

10 Sec. 48.03. PROHIBITION ON PURCHASE AND SALE OF HUMAN FETAL  
11 TISSUE. (a) In this section, "human fetal tissue" has the meaning  
12 assigned by Section 173.001, Health and Safety Code.

13 (b) A person commits an offense if the person knowingly  
14 offers to buy, offers to sell, acquires, receives, sells, or  
15 otherwise transfers any human fetal tissue for economic benefit.

16 (c) An offense under this section is a state jail felony.

17 (d) It is a defense to prosecution under this section that  
18 the actor:

19 (1) is an employee of or under contract with an  
20 accredited university; and

21 (2) acquires, receives, or transfers human fetal  
22 tissue solely for the purpose of fulfilling a donation authorized  
23 by Section 173.005, Health and Safety Code.

24 (e) This section does not apply to:

25 (1) human fetal tissue acquired, received, or  
26 transferred solely for diagnostic or pathological testing;

27 (2) human fetal tissue acquired, received, or

1 transferred solely for the purposes of a criminal investigation;

2 (3) human fetal tissue acquired, received, or  
3 transferred solely for the purpose of disposing of the tissue in  
4 accordance with state law or rules applicable to the disposition of  
5 human remains; or

6 (4) human fetal tissue or human tissue acquired during  
7 pregnancy or at delivery of a child, provided the tissue is acquired  
8 by an accredited university for use in research approved by an  
9 institutional review board or another appropriate university  
10 board, committee, or body charged with oversight applicable to the  
11 research.

12 (f) With the consent of the appropriate local county or  
13 district attorney, the attorney general has concurrent  
14 jurisdiction with that consenting local prosecutor to prosecute an  
15 offense under this section.

16 SECTION 7. Not later than December 1, 2017:

17 (1) the Department of State Health Services shall  
18 prescribe the standard consent form required by Section 173.006,  
19 Health and Safety Code, as added by this Act; and

20 (2) the executive commissioner of the Health and Human  
21 Services Commission shall adopt any rules necessary to implement  
22 Chapter 173, Health and Safety Code, as added by this Act.

23 SECTION 8. (a) Subchapter F, Chapter 171, Health and  
24 Safety Code, as added by this Act, applies only to an abortion  
25 performed on or after the effective date of this Act. An abortion  
26 performed before the effective date of this Act is governed by the  
27 law in effect immediately before the effective date of this Act, and

1 that law is continued in effect for that purpose.

2 (b) Sections 173.003, 173.004, 173.005, and 173.006, Health  
3 and Safety Code, as added by this Act, apply to a donation of human  
4 fetal tissue that occurs on or after the effective date of this Act,  
5 regardless of whether the human fetal tissue was acquired before,  
6 on, or after that date.

7 (c) An authorized facility is not required to make an  
8 initial annual report under Section 173.009, Health and Safety  
9 Code, as added by this Act, before January 1, 2019.

10 (d) Chapter 48, Penal Code, as amended by this Act, applies  
11 only to an offense committed on or after the effective date of this  
12 Act. An offense committed before the effective date of this Act is  
13 governed by the law in effect on the date the offense was committed,  
14 and the former law is continued in effect for that purpose. For  
15 purposes of this section, an offense was committed before the  
16 effective date of this Act if any element of the offense occurred  
17 before that date.

18 SECTION 9. This Act takes effect September 1, 2017.